

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 613/2004

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 21, 2007.

Heard Shri V.R. Mundra for the appellant, and
Shri J.J. Chandurkar for the respondents.

The appellant is the original plaintiff who had filed suit for arrears of rent and possession of the suit property, contending that the predecessor-in-title of the plaintiff had leased out the suit premises to the defendants and though the plaintiff had issued several notices to the defendants since the year 1991, informing them about the change in ownership, the defendants had flatly denied the title of the plaintiff. According to the plaintiff, on 21/7/1997, the plaintiff issued notice for forfeiture of tenancy under Section 111 (g) of the Transfer of Property Act. Since the defendants, by the reply to the notice, again denied the title of the plaintiff, a suit was instituted.

Both the parties tendered evidence and the trial Court, by the judgment dated 5/1/2001, decreed the suit of the plaintiff and directed the defendants to hand over the possession of the suit property to the plaintiff. The trial Court, without discussing some of the

material evidence tendered by the parties on record, held that the tenancy was determinable in view of the provisions of Section 111(g) of the Transfer of Property Act. The trial Court mainly relied on the admission of the defendants that the defendants had not paid rent to any one since long.

The appeal filed by the respondents/defendants against the judgment and decree passed by the trial Court, was allowed and after considering the evidence of the witnesses, as also the documents filed by the parties on record, the appellate Court reversed the finding of the trial Court. So far as the applicability of the provisions of Section 111(g) of the said Act is concerned, it is held that the plaintiff landlord had not proved that the tenancy was determinable under Section 111 (g) of the said Act. The appellate Court considered the fact that the notices issued by the plaintiff to the defendants at Exhs. 72, 75, 82 and 94 did not give any detail about the manner in which the title was acquired by the plaintiff. The appellate Court further considered the absence of pleadings in the plaint about the plaintiff's acquisition of title to the property. The plaintiff had not even mentioned about the sale deed or the date of execution thereof. When the defendants asked for better particulars, the plaintiff filed a vague reply stating therein that the plaintiff had acquired title to the suit property under a sale deed. The appellate Court further considered the fact that the sale deed was not produced by the plaintiff at the time of institution of the suit and the same was produced

before the trial Court after a lapse of more than two years after the institution of the suit. The appellate Court also considered the fact that though the plaintiff claimed to have purchased the suit property some times in the year 1980-81, the plaintiff had issued the notice to the defendants about the attornment of tenancy for the first time in the year 1991. No rent receipt was produced by the plaintiff on record to show that the tenants had at any point of time, paid rent to the plaintiff since he purchased the property in the year 1980. In fact, it is apparent from the record that the defendants were continuously asking the plaintiff the details about the acquisition of title to the suit property by the plaintiff, but the correspondence on the record did not disclose that the plaintiff, at any point of time, gave the details of the sale deed or the manner of acquiring the property, to the defendants.

Since the findings recorded by the appellate Court are pure findings of facts based on the evidence tendered by the parties on record, no interference is called for in this second appeal. No substantial question of law arises for consideration in this second appeal and hence the same is dismissed with no order as to costs.

JUDGE

RMP